

U.S. Department of Homeland Security
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U.S. Immigration
and Customs
Enforcement

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MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors
Assistant Field Office Directors
ICE Health Service Corps

FROM: Thomas Homan
Executive Associate Director

SUBJECT: Identification and Monitoring of Pregnant Detainees

1. Purpose/Background.

- 1.1 U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) must consider and address the particular needs and vulnerabilities of pregnant women detained in its custody. As directed in Secretary Johnson's memorandum, entitled *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014), absent extraordinary circumstances or the requirement of mandatory detention, pregnant women will generally not be detained by ICE. While detained in ICE custody, pregnant women will be re-evaluated regularly to determine if continued detention is warranted, receive appropriate prenatal care, and be appropriately monitored by ICE for general health and well-being.
- 1.2 This memorandum sets forth procedures to ensure that pregnant individuals detained in ICE custody are identified, monitored, and housed in the most appropriate facility to manage their care. The memorandum outlines the relevant responsibilities of offices within ERO to identify and track pregnant detainees, ensure that they are receiving appropriate prenatal care, and re-evaluate their continued detention on an ongoing basis.
- 1.3 This memorandum codifies existing ICE policy and procedures that address the identification and monitoring of pregnant women detained in ICE custody, and complements ICE's national detention standards and ICE Health Service Corps (IHSC) policies, including those referenced below.¹

¹ Unless stated otherwise, any reference to "ICE's national detention standards" within this memorandum refers to the 2000 National Detention Standards, the 2008 Performance-Based National Detention Standards, and the 2011 Performance-Based National Detention Standards.

2. Policy.

- 2.1 ERO is committed to identifying and providing appropriate care for pregnant women detained in ICE custody. ICE's national detention standards require facilities housing immigration detainees to provide the following to all newly admitted detainees: (1) an initial medical screening immediately upon their arrival, including appropriate pregnancy screening; (2) a 14-day full medical assessment; and (3) timely referral for appropriate prenatal and medical care.
- 2.2 Consistent with ICE's national detention standards, detention facilities are required to notify ERO whenever a pregnant detainee is identified (i.e., detainees with "special needs"). The Field Office Director (FOD) shall take steps to ensure he or she is notified whenever a detainee is determined to be pregnant, and shall notify IHSC Headquarters (HQ) as further provided in Sections 5.1 through 5.3, below. FODs will coordinate with ERO Field Operations on an ongoing basis to determine whether continued detention of the pregnant detainee is warranted. The FOD shall also coordinate with IHSC on an ongoing basis to ensure that the pregnant detainee is appropriately housed, to track the term of the pregnancy, and to ensure the pregnant detainee is receiving necessary and appropriate medical care while in custody.
- 2.3 IHSC will maintain information regarding all pregnant detainees in ICE custody, based on information received from the FODs, IHSC Health Services Administrators (HSAs), IHSC Field Medical Coordinators (FMCs), and other designated IHSC personnel. IHSC will develop a system for maintaining this information, providing for ongoing monitoring, tracking, and communication with the field concerning the medical condition of the pregnant detainee and/or the fetus.

3. Superseded Policies and Guidance. The following ICE policy is hereby superseded:

- 3.1 ICE Policy No. 11032.1: *Monitoring of Pregnant Aliens in DRO Custody* (Oct. 24, 2007).
4. **Apprehension, Detention, and Release.** If a pregnant detainee is not subject to mandatory detention, or is otherwise eligible for parole after a finding of credible fear, the FOD shall ensure she is not detained or, if already detained, is released from detention unless the FOD determines that "extraordinary circumstances" warrant detention.² Any decision to detain a woman determined to be pregnant, who is not subject to mandatory detention, must be approved by the FOD, and the FOD must notify ERO Field Operations of the decision. If a pregnant detainee would be subject to mandatory detention, the FOD shall, when feasible, consult with Office of the Principal Legal Advisor (OPLA) management prior to making a custody determination. Pregnant women released subject to enrollment in an Alternatives to

² Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014).

Detention program will not be required to wear a radio frequency or global positioning system monitor.

5. Identification and Notification Procedures.

- 5.1 IHSC facilities. In detention facilities staffed by IHSC, the HSA shall notify the FOD as soon as practicable of any detainee housed at the facility who is determined to be pregnant, but no later than 72 hours after such determination.
- 5.2 Non-IHSC facilities. In facilities not staffed by IHSC, the FOD, in coordination with the FMC or other designated IHSC personnel, shall take steps to ensure that he or she is notified as soon as practicable by facility custody personnel or medical staff of any detainee housed at the facility who is determined to be pregnant, but no later than 72 hours after such determination.
- 5.3 Upon receipt of notification from detention facility personnel, IHSC or other ERO personnel, or any other source, of a detainee determined to be pregnant, the FOD, in coordination with HSAs, FMCs and other designated IHSC personnel in the FOD's area of responsibility, shall immediately notify IHSC HQ, in writing, of the detainee's pregnancy.

6. Centralized Tracking of Pregnant Detainees. In coordination with ERO Field Operations and the ERO Custody Management, IHSC HQ shall collect and maintain relevant information received from the FODs, HSAs, FMCs, and other designated IHSC personnel regarding pregnant detainees, and shall develop a system for maintaining that information to allow for ongoing monitoring and tracking.

7. Monitoring Status of Pregnant Detainees

- 7.1 Upon receipt of information that a detainee is pregnant, IHSC shall review facility capabilities to determine if another detention or off-site treatment facility would provide an environment better suited to the needs of the detainee. IHSC shall immediately report its conclusion to the FOD and, where appropriate, suggest the detention facility for transfer and treatment.³ Where it is determined that the detainee is not appropriately housed, absent exceptional circumstances, the FOD shall transfer the detainee as soon as practicable. All transfer determinations shall be made in accordance with the requirements of ICE Policy No. 11022.1: *Detainee Transfers* (Jan. 4, 2012).
- 7.2 IHSC shall, in coordination with the FOD, continuously monitor the detainee's condition and ensure the detainee is receiving appropriate care. The term of the pregnancy, as well as the general health of the pregnant detainee and the medical condition of the fetus must all be monitored while the detainee remains detained in ICE

³ In facilities **not staffed** by IHSC, IHSC and the FMC will work with facility medical staff, but will not control or provide direct medical care.

custody. HSAs, FMCs, and other designated IHSC personnel shall provide updates to IHSC HQ at least weekly.

7.3 HSAs, FMCs, and other designated IHSC personnel must report any major changes in the health of the pregnant detainee or the medical condition of the fetus to the FOD and to IHSC HQ immediately.

8. Re-evaluating Custody Status of Pregnant Detainees.

8.1 At least weekly, ERO Field Operations shall, in consultation with IHSC HQ and OPLA management, evaluate whether each pregnant detainee's continued detention is appropriate.

8.2 In cases ERO Field Operations deems appropriate, it shall consult with the relevant FOD to consider whether a pregnant detainee's continued detention warrants reconsideration.

9. Authorities and References.

9.1 Immigration and Nationality Act §§ 212(d)(5), 235(b), 236, 241.

9.2 8 C.F.R. §§ 1.1(q), 212.5, 235.3, 236.2(b).

9.3 Memorandum from Jeh Charles Johnson, Secretary of Homeland Security, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014).

9.4 National Detention Standards, including "Medical Care" Standard.

9.5 2008 Performance Based National Detention Standards, including Standard 4.3 "Medical Care."

9.6 2011 Performance Based National Detention Standards, including:

- 1) Standard 4.3 "Medical Care."
- 2) Standard 4.4 "Women's Medical Care."

9.7 IHSC Policy 04-02 "Women's Medical Care."

9.8 ICE Policy No. 11020.1: *Use of GPS Monitoring Devices on Persons who are Pregnant or Diagnosed with a Severe Medical Condition* (Sept. 14, 2009).

10. No Private Right of Action. This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create or diminish any rights, substantive or procedural, enforceable at law or equity by any party in any criminal, civil, or administrative matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.